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09/940,208	08/27/2001	Richard M. Winchester		5639

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EXAMINER

STRIMBU, GREGORY J

ART UNIT	PAPER NUMBER
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3634

DATE MAILED: 06/03/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/940,208

Applicant(s)

R. WINCHESTER

Examiner

Gregory J. Strimbu

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 January 2002 and 08 April 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-14 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

Specification

Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 250 words. It is important that the abstract not exceed 250 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

The abstract of the disclosure is objected to because "improved" on line 1 can be easily implied and therefore should be deleted. On line 4, "at fixed intervals" is confusing since it is unclear if the applicant is referring to the repeating units or to the pairs of uprights. On line 14, "U.S." should be changed to --English--. Correction is required. See MPEP § 608.01(b).

The title of the invention is not descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed. It is suggested that the applicant amend the title to include the uprights. See claim 1.

Claim Objections

Claim 14 is objected to under 37 CFR 1.75(c) as being in improper form because it depends from the apparatus claim 12. However, in order to further the prosecution of the application, it has been assumed that claim 14 depends from claim 13 rather than claim 12.

Claim Rejections - 35 USC § 112

Claims 1-14 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Recitations such as "thereon on a single fixed spacing interval" on line 4 of claim 1 render the claims indefinite because it is unclear what the applicant is attempting to set forth. How can all of the repeating units have the same spacing interval if the construction layout stripping is to be used with various sized construction members having various spacing therebetween? Additionally, it is unclear if the phrase "on a single fixed spacing interval" is modifying the uprights or the repeating units.

Recitations such as "a single fixed interval" on line 7 of claim 1 render the claims indefinite because it is unclear if the applicant is referring to the single fixed spacing interval set forth above or is attempting to set forth another interval in addition to the one set forth above. Recitations such as "the spacing" on line 7 of claim 1 render the claims indefinite because it is unclear what element(s) of the invention include the spacing the applicant is referring to. Recitations such as "the construction element" on line 8 of claim 1 render the claims indefinite because it is unclear which one of the plurality of construction elements set forth above the applicant is referring to. Recitations such as "cutting means" on line 2 of claim 2 render the claims indefinite because it appears that the applicant has attempted to use a "means" clause to recite a claim element as a means for performing a specified function. However, since the applicant has also include the structure that performs the function set forth, it is unclear if the applicant is

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indeed attempting to invoke 35 U.S.C. 112, sixth paragraph. Recitations such as "any type of cutting device" on lines 2-3 of claim 2 render the claims indefinite because it is unclear how a torch used to cut steel or nail clippers can be used to cut the stripping. Recitations such as "the center of the first partition" on line 4 of claim 7 render the claims indefinite because they lack antecedent basis.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1 and 6 are rejected under 35 U.S.C. 102(b) as being anticipated by Salato. Salato discloses a construction layout stripping comprising a pliable, non-elastic elongated base 20, repeating units (not numbered, but comprising the spacing between any two pair of uprights 30) disposed on the base, the repeating units having a plurality of pairs of uprights 30 thereon on a single fixed spacing interval, each pair of uprights adapted to define a partition for grippingly receiving a specified size of construction member 15, each pair of uprights 30 define a partition and any one partition can be

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spaced away from another partition by a distance equal to (x)(the partition length) so that more than one spacing interval can be used with the same stripping.

Claims 1, 3 and 5-12 are rejected under 35 U.S.C. 102(e) as being anticipated by Lafrance. Lafrance discloses a construction layout stripping 10 comprising a pliable, non-elastic elongated base 11, repeating units 15 disposed on the base, the repeating units are spaced apart 12 inches, 16 inches, 18 inches, etc. on center (see column 4, lines 33-36), the base is adapted to receive either a 1 and 5/8" or 3 and 5/8" framing member as shown in figure 5 and adapted to receive a 1/2" framing member as shown in figure 1E, the repeating units having a plurality of pairs of uprights thereon on a single fixed interval, each pair of uprights adapted to define a partition for grippingly receiving a specified size of construction member (see column 5, lines 35-38 which define the uprights as the elements of the tape defining the sides of the depressions), the tape comprising a first elastic layer 45 comprising the adhesive (see column 6, line 12) and a second non-elastic layer 11", the two layers being bonded together.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lafrance as applied to claims 1, 3 and 5-12 above, and further in view of Hanson. Hanson discloses a construction stripping 16 comprising ribs 22.

It would have been obvious to one of ordinary skill in the art to provide Lafrance, as modified above, with cutting ribs, as taught by Hanson, to deflect water.

Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lafrance as applied to claims 1, 3 and 5-12 above, and further in view of Silver et al. Silver et al. discloses the use of removable pressure sensitive adhesive used to position construction elements before fixing the construction elements in place.

It would have been obvious to one of ordinary skill in the art to provide Lafrance with an adhesive, as taught by Silver et al., on the top surface of the layout stripping to more securely hold the construction elements with respect to the layout stripping while fixing the construction elements in place.

Claims 13 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lafrance as applied to claims 1, 3 and 5-12 above. The use of the apparatus of Lafrance, as modified above, would inherently lead to the method steps of claims 13 and 14.

Should the applicant disagree with the examiner's interpretation of the teachings of Lafrance as set forth above, claims 1 and 5-12 are rejected under 35 U.S.C. 103(a)

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as being unpatentable over Lafrance in view of Salato. Lafrance discloses a construction layout stripping 10 comprising a pliable, non-elastic elongated base 11, repeating units 15 disposed on the base, the repeating units are spaced apart 12 inches, 16 inches, 18 inches, etc. on center (see column 4, lines 33-36), the base is adapted to receive either a 1 and 5/8" or 3 and 5/8" framing member as shown in figure 5 and adapted to receive a 1/2" framing member as shown in figure 1E. Lafrance is silent concerning uprights.

However, Salato discloses a construction layout stripping having a plurality of pairs of uprights 30 thereon on a single fixed spacing interval, each pair of uprights adapted to define a partition for grippingly receiving a specified size of construction member 15.

It would have been obvious to one of ordinary skill in the art to provide Lafrance with uprights, as taught by Salato, to securely grip construction members to ensure their proper position before fixedly attaching the construction members to another construction member.

Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lafrance in view of Salato as applied to claims 1 and 5-12 above, and further in view of Hanson. Hanson discloses a construction stripping 16 comprising ribs 22.

It would have been obvious to one of ordinary skill in the art to provide Lafrance, as modified above, with cutting ribs, as taught by Hanson, to deflect water.

Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lafrance in view of Salato as applied to claims 1 and 5-12 above, and further in view of Lambelet. Lambelet disclose a strip comprising two layers, an elastic layer 5 and a non-elastic layer 4 which are bonded together.

It would have been obvious to one of ordinary skill in the art to provide Lafrance, as modified above, with a two layer construction, as taught by Lambelet, to more securely attach the layout stripping.

Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lafrance in view of Salato, as applied to claims 1 and 5-12 above, and further in view of Silver et al. Silver et al. discloses the use of removable pressure sensitive adhesive used to position construction elements before fixing the construction elements in place.

It would have been obvious to one of ordinary skill in the art to provide Lafrance, as modified above, with an adhesive, as taught by Siler et al., on the top surface of the layout stripping to more securely hold the construction elements with respect to the layout stripping while fixing the construction elements in place.

Claims 13 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lafrance in view of Salato as applied to claims 1 and 5-12 above. The use of the apparatus of Lafrance, as modified above, would inherently lead to the method steps of claims 13 and 14.

Response to Arguments

Applicant's arguments filed January 7, 2002 have been fully considered but they are moot in view of the new grounds of rejection.

Additionally, the affidavits of J. Frank Laiben, John W. Loyd, J.D. Hogan and Toby Trentadue are moot in view of the new grounds of rejection.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Brandt, Wagner et al. and Edmondson et al. are cited for disclosing a construction layout stripping.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. The applicant has amended claim 1 to include the further limitation of a partition for grippingly receiving a construction member. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

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the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gregory J. Strimbu whose telephone number is 703-305-3979. The examiner can normally be reached on Monday through Friday 8:00 to 4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Daniel P. Stodola can be reached on 703-308-2686. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-3597 for regular communications and 703-305-3597 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-2168.

A handwritten signature in black ink, appearing to read "Gregory J. Strimbu", with a long horizontal line extending to the right.

Gregory J. Strimbu
Primary Examiner
Art Unit 3634
May 23, 2003